IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18790 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE ANANT S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NARESHKUMAR HIRAJI CHOWDHARY - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR H.S.MULIA for Petitioner(s) : 1,

Mrs. Hansa B. Punani, ld. A.G.P. for

Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE ANANT S.DAVE

Date : 17/10/2005

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the detenue has challenged the order of detention dated 21.07.2005, passed by the respondent no.2, in exercise of powers under sub-section (1) of Section 3 of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short “the PASA Act”) detaining the detenue as a “bootlegger”, as illegal and violative of Articles 21 and 22 of the Constitution of India.

2. As stated in the order of detention and the ground submitted thereto, the detaining authority has relied upon solitary case, being C.R.No.1148 of 2005 dated 19.07.2005 registered at Prohibition Police Station,

West Zone, Ahmedabad under the provisions of Sections 66B, 65AE, 81 and 116 of the Bombay Prohibition Act. Apart from the above mentioned solitary offence, no other statements of the witnesses or materials produced on record to reveal the activities of the detenue as “Bootlegger” as defined under Section 2(b) of the Act. In the penultimate paragraph of the order of detention, it is mentioned that, though the detenue is in judicial custody, he may be released on bail in the event of filing an application for bail before the competent court and, thereafter he may continue to indulge in similar nefarious activities. The detaining authority has arrived at the conclusion that the remedy under the ordinary law is not sufficient to prevent the detenue from indulging into antisocial and criminal activities. Therefore, the detaining authority has passed the order of detention

dated 21.07.2005.

3. Shri H.S.Mulia, learned counsel appearing for the detenue has assailed the order of detention contending that:

(i) solitary incident alleged against the detenue is not of such magnitude and intensity as to have the effect of disturbing the public order so as to pass an order under Section 3(1) of the PASA Act, and

(ii) the subjective satisfaction arrived at by the detaining authority is vitiated on the ground that, though the detenue is under judicial custody, after the period of judicial custody is over, there is likelihood of detenue being released on bail by the Competent Court.

He has further submitted that there is no material on record for arriving at the

subjective satisfaction by the detaining authority to the effect that if an order enlarging the detenue on bail is passed, the detenue may continue to carry on antisocial and criminal activities in future also. He has further submitted that the detaining authority has not applied his mind to the vital fact and there was non-application of mind before recording the order of detention. In support of his contention, he has relied upon the following case-laws:

i. Judgment and order dated 22.08.2000 of the Division Bench of this Court (Coram:M.R.Calla and R.R.Tripathi, JJ.), in Letters Patent Appeal No.223 of 2000 in Special Civil Application No.554 of 2000 (Ashok Balabhai Makwana Vs. State of Gujarat);

ii. Piyush Kantilal Mehta Vs. Commissioner of Police, AIR 1989 Supreme Court 491

iii. Om Prakash Vs. Commissioner of Police and others, JT 1989 (4) SC 177

iv. Kanuji S. Zala Vs. State of Gujarat and others, 1999 (2) GLH 415.

The learned advocate for the petitioner has also relied upon the order dated 26.09.2005 passed by this Court in Special Civil Application No.17443 of 2005 by which co-detenue Sukhram Aduji Khichad (Bisndi) is already ordered to be released quashing and setting aside the order of detention passed against him.

4. Mrs. Hansa B. Punani, learned Assistant Government Pleader has drawn the attention of the Court to the affidavit-in-reply filed by the detaining authority and submitted that registration of crime before at Prohibition Police Station, West Zone, Ahmedabad would go

to show that the detenue had, in fact, indulged into such activities, which can be said to be disturbing the public order. She has further submitted that there was sufficient material before the detaining authority to pass the order of detention and no interference is called for by this Court in exercise of its power under Article 226 of the Constitution of India.

5. Having heard the rival submissions of the parties and perused the records of the case, I am of the view that the solitary incident or instance in question, as alleged, has not been shown as affecting the 'public order' or likely to create public disturbance or prejudicial or adverse to the maintenance of 'public order', and, therefore, the continued detention of the detenue has not been shown to be justifiable. It cannot be disputed that firstly, there must be cogent material before

the detaining authority, and secondly, there must be material to show that the detaining authority has applied its mind to the vital and important aspects and facts before reaching the subjective satisfaction required under the law. The power to detain a person under the PASA Act is not based on simple facts about registration of crimes under the Bombay Prohibition Act or the activities of bootlegging of the detenue. There has to be nexus and link for such activities with disturbance of the public order. The activities of the detenue must, in the backdrop of the facts, reflect that such activities disturbed the even tempo or normal life of the community in the locality or disturbed general peace and tranquility iin the locality. On a careful perusal of the ground of detention order and the affidavit in reply, and relying upon the judgment and order dated 22.08.2000 of the Division Bench

of this Court (Coram: M.R.Calla and R.R.Tripathi JJ.), in Letters Patent Appeal No.223 of 2000 in Special Civil Application No.554 of 2000, in my view, it cannot be said that the activities of the detenue are prejudicial to the public order and, therefore, the order of detention passed by the detaining authority cannot be sustained and is required to be quashed and set aside.

6. In the result, the petition is allowed. The order of detention dated 21.07.2005 is quashed and set aside. The detenue, Nareshkumar Hiraji Chowdhary is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly. Direct Service is permitted.

(ANANT S. DAVE, J.)

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